

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 7, 2021**

**Hearing Room 301**

10:30 AM

**1: -**

**Chapter**

**#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.**

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Docket 0

**United States Bankruptcy Court  
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**CONT...**

**Chapter**

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
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**1:13-14437 Jairo Gamba**

**Chapter 7**

**#1.00** Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Docket 134

**Tentative Ruling:**

David Seror, chapter 7 trustee – approve additional fees of \$970.85, on a final basis.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

<b>Party Information</b>
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**Debtor(s):**

Jairo Gamba

Represented By  
Robert L Wilkes

**Trustee(s):**

David Seror (TR)

Represented By  
Jessica L Bagdanov  
Richard Burstein  
Steven T Gubner

**United States Bankruptcy Court  
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**1:18-10886 Exotic Euro Cars, Inc. and Kain Kumar**

**Chapter 7**

**#2.00** Trustee's Final Report and Applications for Compensation

Amy L. Goldman, Chapter 7 Trustee

Levene, Neale, Bender, Yoo & Brill LLP, Attorneys for Chapter 7 Trustee

LEA Accountancy, LLP, Accountants for Chapter 7 Trustee

Docket 159

**Tentative Ruling:**

Amy L. Goldman, chapter 7 trustee – approve fees of \$7,555.62 and reimbursement of expenses of \$36.37, on a final basis.

Levene, Neale, Bender, Yoo & Brill L.L.P. (“LNBYB”) counsel to chapter 7 trustee – approve fees of \$31,000.00 and reimbursement of expenses of \$13,831.96, on a final basis.

LEA Accounting, accountant to chapter 7 trustee – approve fees of \$19,229.00 and reimbursement of expenses of \$525.94, on a final basis.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

<b>Party Information</b>
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**Debtor(s):**

Exotic Euro Cars, Inc.

Represented By  
Kahlil J McAlpin

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**CONT... Exotic Euro Cars, Inc. and Kain Kumar**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Todd A Frealy  
Carmela Pagay

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**1:20-10717 D & F Roofing Company**

**Chapter 7**

**#3.00** Trustee's Final Report and Applications for Compensation

Amy L. Goldman, Chapter 7 Trustee

Karl T. Anderson CPA, Inc., Accountants for Chapter 7 Trustee

Docket 25

**Tentative Ruling:**

Amy L. Goldman, chapter 7 trustee – approve fees of \$2,450.00 and reimbursement of expenses of \$10.05, on a final basis.

Karl T. Anderson, CPA, Inc., accountant to chapter 7 trustee – approve fees of \$3,860.00 and reimbursement of expenses of \$133.69, on a final basis. The Court will not approve \$74.75 in expenses because no statement was included specifying the charge per page for photocopying.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

<b>Party Information</b>
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**Debtor(s):**

D & F Roofing Company

Represented By  
James L Tenner

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

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**1:21-10312 Millie Manaois Williams**

**Chapter 7**

**#4.00** Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Docket 23

**Tentative Ruling:**

Nancy Zamora, chapter 7 trustee – approve fees of \$574.00 and reimbursement of expenses of \$37.65, on a final basis.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

<b>Party Information</b>
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**Debtor(s):**

Millie Manaois Williams

Represented By  
Raymond J Bulaon

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

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**1:21-10179 Alex Foxman and Michal J Morey**

**Chapter 11**

**#5.00** Application for payment of interim fees and/or expenses of  
Susan K. Seflin, Subchapter V Trustee

fr. 8/19/21

Docket 140

**Tentative Ruling:**

Susan K. Seflin, chapter 11 subchapter V trustee – approve fees of \$14,092.50 for the period covering February 4, 2021 through June 30, 2021, pursuant to 11 U.S.C. § 331, on an interim basis. Until further order of the Court, Ms. Seflin may receive up to 65% of the approved fees and 100% of the approved expenses.

Note: No response has been filed. Accordingly, no court appearance by the subchapter V trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the subchapter V trustee will be so notified.

<b>Party Information</b>
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**Debtor(s):**

Alex Foxman

Represented By  
Stella A Havkin

**Joint Debtor(s):**

Michal J Morey

Represented By  
Stella A Havkin

**Movant(s):**

Susan K Seflin (TR)

Pro Se



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**CONT... Alex Foxman and Michal J Morey**

**Chapter 11**

**Trustee(s):**

Susan K Seflin (TR)

Pro Se

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**1:21-10179 Alex Foxman and Michal J Morey**

**Chapter 11**

**#6.00** Application for payment of Interim fees and expenses for  
Havkin & Shrago Attorneys at Law, Debtors' Bankruptcy Counsel

fr. 8/5/21; 8/19/21

Docket 145

**Tentative Ruling:**

Havkin & Shrago ("Havkin"), counsel to debtors and debtors in possession – approve fees of \$38,608.25 and reimbursement of expenses of \$753.54 for the period covering February 3, 2021 through June 30, 2021, pursuant to 11 U.S.C. § 331, on an interim basis. Until further order of the Court, Havkin may receive up to 65% of the approved fees and 100% of the approved expenses.

The Court will allow Havkin to apply the remaining pre-petition retainer balance in the amount of \$11,612.00. The Court will not approve \$1,855.25 in fees for the reasons set forth below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under section 327 "reasonable compensation for actual, necessary services rendered by the professional person." In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including - (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . . ." 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 11 case, "the court shall not allow compensation for - (i) unnecessary duplication of services; or (ii) services that were not - (I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

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**Chapter 11**

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, at \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, at \*1 (Bankr. E.D. Cal. Apr. 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

The Court will not approve the following fees, in the amount of \$396.00, because they are secretarial in nature:

Category	Date	Timekeeper	Description	Time	Fee
Litigation	4/28/21	SAH	Prepare request for alias summons.	0.3	\$132.00
Litigation	5/5/21	SAH	Prepare proof of service for executed service on defendants.	0.3	\$132.00
Relief from Stay	5/14/21	SAH	Prepare request for transcript.	0.3	\$132.00

The Court will partially allow fees for the services set forth below, for preparing the summons, preparing the adversary coversheet, and preparing the notice of compliance with Rule 7026, which are services that are secretarial in nature:

Category	Date	Timekeeper	Description	Time	Court Will Allow	Revised Fee
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**Chapter 11**

Litigation	4/8/21	SAH	Revise adversary complaint, prepare summons, and adversary coversheet.	2.5	1.5	\$660.00
Litigation	4/23/21	SAH	Research service addresses, prepare notice of compliance with Rule 7026.	1.0	0.5	\$220.00

The Court will approve \$2,779.25 of the \$3,578.50 in fees billed to prepare the fee application for the employment of special counsel. Havkin made inadequate and misleading disclosures in special counsel's employment application about which parties special counsel would represent post-petition, the source of the prepetition retainer and postpetition payments to be made special counsel. *See United States Trustee's Objection to Quantum Law Group, LLP's Application for Payment of Interim Fees And/Or Expenses* [doc. 156], p. 5 at ¶¶ 11-26. Consequently, as set forth below, the Court will reduce the amounts billed for drafting special litigation counsel's employment application by 50%:

Category	Date	Timekeeper	Description	Time	Court Will Allow	Revised Fee
Employment	2/18/21	DJ	Draft employment application for special counsel.	1.7	0.85	\$276.25
Employment	2/19/21	DJ	Draft employment application for special counsel.	2.0	1.0	\$325.00
Employment	3/25/21	SAH	Revise special employment application and statement of disinterestedness.	0.4	0.2	\$88.00

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**Chapter 11**

Employment	4/12/21	SAH	Prepare declaration of non-opposition and order for special counsel application.	0.5	0.25	\$110.00
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Finally, courts may order paid only a percentage of the interim fees requested and hold back the remaining portion pending a final fee request. *See In re Bank of New England*, 134 B.R. 450, 458-459 (Bankr. D. Mass. 1991). "There is indeed a common practice, when dealing with interim fees, of holding back the payment of a certain percentage until the ultimate final allowance of fees." *Id.*; *see also SEC v. Byers*, 590 F. Supp. 2d 637 (S.D.N.Y. 2008) (approving fee applications, but substantially reducing fees and imposing 20% holdback); and *In re Four Star Terminals, Inc.*, 42 B.R. 419 (Bankr. D. Alaska 1984).

Havkin's application states that \$3,880.00 of the \$15,000.00 retainer was used prepetition, leaving \$11,612.00 available to be applied to any fee award. *See Trustee's Objection to Havkin and Shrago's Application for Payment of Interim Fees And/Or Expenses* [doc. 157], p. 2.

The September 2021 monthly operating report [doc. 179] shows that, as of September 14, 2021, the debtors had \$44,407.93 cash on hand. Even after the retainer funds are applied, the debtors will have to pay an amount which will consume a significant portion of the debtors' cash, in addition to interim amounts to be paid to the subchapter V trustee and the debtors' special counsel. Thus, on an interim basis, the Court will allow up to 65% of the approved fees and 100% of the approved expenses to be paid, until further order of the Court.

Havkin must submit the order within seven (7) days.

<b>Party Information</b>
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**Debtor(s):**

Alex Foxman

Represented By  
Stella A Havkin

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**CONT... Alex Foxman and Michal J Morey**

**Chapter 11**

**Joint Debtor(s):**

Michal J Morey

Represented By  
Stella A Havkin

**Movant(s):**

Havkin & Shrago Attorneys at Law

Represented By  
Stella A Havkin

**Trustee(s):**

Susan K Seflin (TR)

Pro Se

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**1:21-10179 Alex Foxman and Michal J Morey**

**Chapter 11**

**#7.00** Application for payment of interim fees and expenses for  
Quantum Law Group, LLP, Special litigation counsel for debtors

fr. 8/5/21; 8/19/21

Docket 148

**Tentative Ruling:**

Quantum Law Group, LLP ("Quantum"), special litigation counsel for the debtors and debtors in possession - in accordance with the Stipulation between the United States Trustee and Quantum [doc. 182], approve fees of \$8,884.35 and reimbursement of expenses of \$60.72 for the period covering February 4, 2021 through June 30, 2021, pursuant to 11 U.S.C. § 331, on an interim basis. Until further order of the Court, Quantum may receive up to 65% of these approved fees and 100% of the approved reimbursement of expenses.

While the bankruptcy case is pending, any future payments by the debtors **or any third party(ies)** for Quantum's services can occur only after Quantum has filed a fee application pursuant to 11 U.S.C. § 330 and obtained Court approval. *See Stipulation Between United States Trustee and Quantum Law Group, LLP Resolving the United States Trustee's Objection to First Interim Application for Allowance of Fees* [doc. 182], p. 4 at ¶¶ 15-19.

Quantum must submit the order within seven (7) days.

<b>Party Information</b>
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**Debtor(s):**

Alex Foxman

Represented By  
Stella A Havkin

**Joint Debtor(s):**

Michal J Morey

Represented By  
Stella A Havkin

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**CONT... Alex Foxman and Michal J Morey**

**Chapter 11**

**Movant(s):**

Quantum Law Group

Pro Se

**Trustee(s):**

Susan K Seflin (TR)

Pro Se



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**1:18-11729 Richard Philip Dages**

**Chapter 7**

**#7.10** Order to show cause why debtor's counsel should not be  
ordered to disgorge fees

fr. 3/12/20; 4/30/20; 10/22/20; 3/18/21; 4/8/21; 4/22/21; 6/24/21; 9/23/21

Docket 136

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Richard Philip Dages

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Diane C Weil (TR)

Pro Se

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**1:20-12046 Buena Park Drive LLC**

**Chapter 11**

**#8.00** U.S. Trustee Motion to dismiss or convert case under 11 U.S.C. section 1112(b)

Docket 167

**\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 9/30/21. [Doc. 191]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Buena Park Drive LLC

Represented By  
Thomas C Corcovelos

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**1:21-10736 Top Flight Investments, LLC**

**Chapter 11**

**#9.00** U.S. Trustee Motion to dismiss or convert case under 11 U.S.C. section 1112(b)

Docket 66

**\*\*\* VACATED \*\*\* REASON: order dismissing case entered on 10/5/21 doc  
# [78]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Top Flight Investments, LLC

Represented By  
Matthew Abbasi

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1:21-11407 JANA, LLC

Chapter 11

#10.00 Status conference re: chapter 11 case

**STIP TO DISMISS CASE FILED 10/5/21**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order dismissing case with 180-day bar entered 10/6/21. [Dkt. 35]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

JANA, LLC

Represented By  
Matthew Abbasi

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**1:14-10097    Rodney M Mojarro**

**Chapter 11**

**#11.00**    Motion to Reopen Chapter 11 Case and for Entry of  
Discharge and Final Decree Closing Chapter 11 Case

Docket      256

**Tentative Ruling:**

The Court will continue the hearing to provide time for the debtor to file a supplemental declaration.

The debtor must file a supplemental declaration stating that all payments to holders of Class 6(b) unsecured allowed claims are complete and that all payments to holders of allowed claims in Class 5(a) through Class 5(r) are current, in accordance with the confirmed chapter 11 plan.

<b>Party Information</b>
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**Debtor(s):**

Rodney M Mojarro

Represented By  
Michael J Jaurigue  
Nam H. Le  
Elaine Le  
Ryan A. Stubbe

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**1:20-10026 Joseph Wanamaker**

**Chapter 7**

**#11.10** Order to show cause re motion by creditors the Affiliati Network, Inc. and Sanjay Palta for OSC re contempt and then for Order holding 2004 examinee, Christine Naud, in contempt of court after hearing and (2) Requiring compliance with LBR 7026-1(C)(3)

fr. 9/23/21

Docket 202

**Tentative Ruling:**

The Court will hold Christine Naud in contempt. Ms. Naud must produce the requested documents within 7 days of entry of the order holding Ms. Naud in contempt.

**I. BACKGROUND**

On January 7, 2020, Joseph Wanamaker ("Debtor") filed a voluntary chapter 7 petition. In his schedule I [doc. 23], Debtor indicated that his cousin pays \$13,313 per month towards his mortgage. Debtor also indicated that he was employed by Ship Plus Logistics ("Ship Plus"), earning income of \$4,333.33 per month. In his schedule D [doc. 21], Debtor also identified a lien against his real property, in the amount of \$535,703, in favor of Ship Plus. In his statement of financial affairs [doc. 26], Debtor stated that he received a loan from "his cousin" in the amount of \$159,756.

On April 3, 2020, The Affiliati Network, Inc. and Sanjay Palta (together, the "Affiliati Creditors") filed a motion for a Federal Rule of Bankruptcy Procedure ("Rule") 2004 examination of Christine Naud (the "2004 Motion") [doc. 51]. In the 2004 Motion, supported by a declaration by the Affiliati Creditors' counsel, the Affiliati Creditors referenced Debtor's testimony from his § 341(a) meeting of creditors. According to the Affiliati Creditors, during that meeting of creditors, Debtor testified that, among other things, that Ms. Naud is the "cousin" referenced in Debtor's schedules and that Ms. Naud is one of the owners of Ship Plus. In light of Ms. Naud's financial relationship with Debtor, the Affiliati Creditors requested production of certain

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**Joseph Wanamaker**

**Chapter 7**

documents from Ms. Naud to assess, among other things, if Ms. Naud held any property for Debtor's benefit or participated in transfers of Debtor's property. In relevant part, the Affiliati Creditors requested production of the following—

40. All records from any financial institution where You held an account or deposited monies, including, but not limited to, banks, savings and loans, thrifts and loans, credit union accounts, or merchant accounts (MIDs), between January 1, 2016 and the present, and including, but not limited to, any monthly account statements, cancelled checks, deposit receipts, records for Venmo or other such accounts, share drafts, money market account statements, certificates of deposit, records of cashier's checks, passbook accounts or share accounts in Your name or in another business entity's name or some other person's name into which You deposited funds in which You claimed or held an interest, and any emails and attachments thereto, that are in Your possession, custody, or control and including all documents that are responsive to this document production request, regardless of whether the documents would positively or adversely affect the Debtor in any subsequent action to revoke his discharge.

...

43. Any and all tax returns and documents containing information used to prepare Your tax returns from after January 1, 2016 to the present, including, but not limited to, any records of income used to prepare Your tax returns, emails and attachments thereto between You and any person or business entity who prepared Your tax returns, and any other forms of communication, electronic or otherwise, that are in Your possession, custody, or control and including all documents that are responsive to this document production request, regardless of whether the documents would positively or adversely affect the Debtor in any subsequent action to revoke his discharge.

2004 Motion, Exhibit 1. The Affiliati Creditors served the 2004 Motion on Debtor and Ms. Naud.

On April 7, 2020, the Court entered an order granting the 2004 Motion (the "2004

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**Chapter 7**

Order") [doc. 54]. In the 2004 Order, the Court stated that "Ms. Naud is ordered to respond and produce documents pursuant to the document production categories set forth in 'Attachment 1' to the [2004] Motion for inspection and copying by **June 1, 2020 at 5:00 p.m....**" 2004 Order, ¶ 4.

On May 27, 2020, the Affiliati Creditors filed an *ex parte* request for the Court to reset the date and time for Ms. Naud's Rule 2004 examination (the "Ex Parte Application") [doc. 63]. Through the Ex Parte Application, the Affiliati Creditors sought to reset the deadline for Ms. Naud to comply with the request for production of documents to July 10, 2020. In a declaration in support of the Ex Parte Application, the Affiliati Creditors' counsel explained that Ms. Naud had evaded service of the subpoena. The Affiliati Creditors served the Ex Parte Application on Ms. Naud. On May 28, 2020, the Court entered an order granting the Ex Parte Application (the "Ex Parte Order") [doc. 67]. In the Ex Parte Order, the Court again stated that "Ms. Naud is ordered to respond and produce documents pursuant to the document production categories set forth in 'Attachment 1' to the [2004 Motion] for inspection and copying by the reset date and time of **July 10, 2020 at 5:00 p.m....**" Ex Parte Order, ¶ 5.

On June 22, 2020, the Affiliati Creditors served a subpoena on Ms. Naud (the "Subpoena"). Declaration of Brett B. Curlee [doc. 206], ¶ 2, Exhibit H. The Subpoena included the requests for production of documents attached to the 2004 Motion. *Id.* The Subpoena notified Ms. Naud that the provisions of Federal Rules of Civil Procedure ("FRCP") 45(c), (d), (e) and (g) applied to the Subpoena. *Id.*

On July 7, 2020, the Affiliati Creditors and Ms. Naud submitted a stipulation to reset the 2004 Examination and the deadline for Ms. Naud to produce documents (the "Stipulation") [doc. 97]. On July 10, 2020, the Court entered an order approving the Stipulation and resetting the deadline for production to September 9, 2020 at 5:00 p.m. (the "Stipulated Order") [doc. 100]. On August 28, 2020, the Affiliati Creditors and Ms. Naud submitted another stipulation to reset the 2004 Examination and the deadline for Ms. Naud to produce documents (the "Second Stipulation") [doc. 127]. On September 1, 2020, the Court entered an order approving the Second Stipulation and resetting the deadline for production to December 1, 2020 at 5:00 p.m. (the "Second Stipulated Order") [doc. 131]. On November 25, 2020, the Affiliati Creditors and Ms. Naud submitted another stipulation to reset the 2004 Examination and the deadline for Ms. Naud to produce document (the "Third Stipulation") [doc.



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166]. On the same day, the Court entered an order approving the Third Stipulation and resetting the deadline for production to May 10, 2021 at 5:00 p.m. (the "Third Stipulated Order") [doc. 167]. On April 12, 2021, the Affiliati Creditors and Ms. Naud submitted another stipulation to reset the 2004 Examination and the deadline for Ms. Naud to produce document (the "Fourth Stipulation") [doc. 182]. On April 14, 2021, the Court entered an order approving the Fourth Stipulation and resetting the deadline for production to July 19, 2021 at 5:00 p.m. [doc. 186].

On July 19, 2021, the Affiliati Creditors filed a motion for issuance of an Order to Show cause why Ms. Naud should not be held in contempt for refusing to produce certain documents requested via the 2004 Motion (the "Motion") [doc. 202]. Through the Motion, the Affiliati Creditors request an order holding Ms. Naud in contempt for failing to timely produce responsive documents and requiring production of such documents within 10 days of entry of the order. In relevant part, the Affiliati Creditors explained that the requested documents were necessary to show: (A) the disposition of cash transfers from Ms. Naud to Debtor; (B) the source of the scheduled loan from Ms. Naud to Debtor and how Ms. Naud treated the loan in her tax returns; and (C) whether Debtor and Ms. Naud transferred assets that might be recovered by the estate. On July 23, 2021, the Court issued an Order to Show Cause [doc. 216].

On August 23, 2021, the Affiliati Creditors and Ms. Naud submitted a discovery stipulation pursuant to Local Bankruptcy Rule 7026-1(c) (the "Discovery Stipulation") [doc. 228]. On September 9, 2021, Ms. Naud also filed an opposition to the Motion (the "Opposition") [doc. 256]. In the Discovery Stipulation and the Opposition, Ms. Naud argues that: (A) Ms. Naud and her husband, with whom Ms. Naud files her taxes and jointly holds certain accounts, have a right to privacy; (B) the requests exceed the scope of Rule 2004; (C) the Affiliati Creditors have not explained how Ms. Naud's information will help investigate Debtor's assets and liabilities; and (D) the Affiliati Creditors have engaged in fraudulent conduct.

## **II. ANALYSIS**

As a preliminary matter, both the Affiliati Creditors and Ms. Naud dedicate a significant amount of their filings to discussing the litigation history between the parties and accusing each other of criminal behavior. These matters are irrelevant to the discrete issue before the Court, namely, whether Ms. Naud should be held in

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contempt for her refusal to produce certain documents requested via the Subpoena. The answer to that narrow question is yes.

***A. The Requests Do Not Exceed the Scope of Rule 2004***

Ms. Naud asserts that the requests exceed the scope of Rule 2004. However, despite being served, Ms. Naud did not object to the 2004 Motion. As discussed above, the Affiliati Creditors served Ms. Naud with the 2004 Motion approximately *17 months* ago. Since then, Ms. Naud and the Affiliati Creditors have submitted multiple stipulations to reset the deadlines related to Ms. Naud's examination. During the significant period between service of the 2004 Motion and execution of the four stipulations resetting deadlines, Ms. Naud did not oppose the 2004 Motion or request reconsideration of the 2004 Order. As such, Ms. Naud's arguments under Rule 2004 are untimely and contrary to the Court's longstanding 2004 Order.

In any event, Ms. Naud's arguments are unpersuasive. As noted by the Affiliati Creditors, the cases referenced by Ms. Naud regarding the scope of Rule 2004 involve creditors seeking examination after confirmation of a chapter 11 plan. Those cases are inapposite in this chapter 7 liquidation. Under Rule 2004(b)—

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.

In both the 2004 Motion and the Motion, the Affiliati Creditors explained that the requested documents are meant to reveal: (A) any assets held by Ms. Naud for the benefit of Debtor; (B) any transfers that may be recovered for the estate; and (C) the source of Ms. Naud's loan to Debtor, as well as her characterization of the loan. These matters relate to Debtor's property and liabilities and Debtor's right to receive a discharge. Thus, even if Ms. Naud's opposition was timely and/or not already resolved by an order of the Court, the requests would be within the purview of Rule 2004(b).

***B. Whether the Requests are Protected or Privileged***

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Pursuant to FRCP 45(e)—

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*(2) Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

*(3) Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits

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specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

"Under Rule 45, the nonparty served with the subpoena duces tecum must make objections to it within 14 days after service or before the time for compliance, if less than 14 days." *U.S. ex rel. Schwartz v. TRW, Inc.*, 211 F.R.D. 388, 392 (C.D. Cal. 2002). "Failure to serve timely objections waives all grounds for objection, including privilege." *Id.*

Here, the Affiliated Creditors served the Subpoena on Ms. Naud on June 22, 2020, i.e., over a year ago. Ms. Naud did not file a motion to quash the Subpoena or a motion for a protective order. Instead, the first time Ms. Naud objected to the Subpoena was in opposition to issuance of the Court's Order to Show Cause, on July 23, 2021. Thus, Ms. Naud waived all objections to the Subpoena, including any privilege-based objections.

In any event, neither Ms. Naud nor her husband have a right to privacy in the requested documents. "Federal Rule of Evidence ("FRE") 1101 provides that the rule of evidentiary privilege of the FRE applies to all stages of proceedings before bankruptcy judges." *In re Yassai*, 225 B.R. 478, 482 (Bankr. C.D. Cal. 1998). "Under the FRE, 'evidentiary privileges in federal question cases are governed by federal common law.'" *Id.* (quoting *Dole v. Milonas*, 889 F.2d 885, 889 n.6 (9th Cir. 1989)).

"The Ninth Circuit has stated that it knew 'of no authority which recognizes a privilege for communications between bank and depositor' and 'decline[d] to create such a privilege....'" *Id.*, at 483 (quoting *Harris v. United States*, 413 F.2d 316, 319 (9th Cir. 1969)). "In subsequent cases, courts have uniformly held that the banker depositor privilege was not recognized at common law and does not exist in the Federal Courts." *Id.* (internal quotation omitted). The same is true for tax returns. *See Hernandez v. Yong Hoon Cho*, 867 F.2d 613 (9th Cir. 1989 ("[U]nder federal law, tax returns are not privileged from discovery.")).

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In addition, courts have held that "the incidental disclosure of [a spouse's] financial information is an insufficient basis to quash [a] subpoena." *United States v. Penatello*, 2021 WL 3185429, at \*2 (E.D.N.Y. July 27, 2021) (aggregating cases holding that such incidental disclosure is not a basis to quash a subpoena and reiterating that such financial information is not privileged under federal law). Ms. Naud, who does not have standing to assert arguments on behalf of her husband, has not set forth any authorities contrary to *Penatello* and the numerous cases referenced therein. In light of the authorities above, the documents requested by the Affiliated Creditors are not privileged.

***C. Whether Ms. Naud Should be Held in Contempt***

Pursuant to 11 U.S.C. § 105(a), the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out provisions of this title," and take "any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

"The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *In re Dyer*, 322 F.3d 1178, 1190-91 (9th Cir. 2003). "Substantial compliance with the terms of a court's order is a defense to civil contempt." *In re Count Liberty, LLC*, 370 B.R. 259, 275 (Bankr. C.D. Cal. 2007). The party being held in contempt must show that he or she took every reasonable step to comply with the Court's order. *Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992) (citing to *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th Cir. 1976)); see also *Count Liberty*, at 275 ("To establish substantial compliance, the contemnor must show that he took all reasonable steps within his power to comply."). In addition, pursuant to FRCP 45(g)—

Contempt. The court for the district where compliance is required--and also, after a motion is transferred, the issuing court--may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Here, under either FRCP 45(g) or the Court's civil contempt powers, Ms. Naud may be held in contempt. As outlined above, the Court entered several orders requiring Ms. Naud to comply with the production of documents. Ms. Naud failed to timely

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comply, and did not demonstrate that she took reasonable steps to comply with the Court's orders. Moreover, under FRCP 45(g), and for the reasons discussed above, Ms. Naud has not provided an "adequate excuse" for failing to obey the Subpoena.

Ms. Naud could have timely opposed the 2004 Motion, sought reconsideration of the 2004 Order or filed a motion for protective order or to quash the Subpoena. Ms. Naud did not take any of these actions. Instead, without substantial justification or an adequate excuse, Ms. Naud continues to withhold the requested documents. Consequently, the Court will hold Ms. Naud in contempt.

**III. CONCLUSION**

The Court will hold Ms. Naud in contempt. Ms. Naud must produce the requested documents within 7 days of entry of the order holding Ms. Naud in contempt. The Affiliati Creditors did not request sanctions. However, if Ms. Naud does not timely comply with the Court's order to produce the requested documents, the Court will impose a penalty of \$25 per day, paid to the Court, until Ms. Naud complies fully with the Court's order.

The Affiliati Creditors must submit an order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joseph Wanamaker

Represented By  
Peter M Lively

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Leonard Pena

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**1:17-13138    John Orlanes Case and Lourdes Halili Case**

**Chapter 7**

**#11.20    Application to employ Rodeo Realty, Inc. as real estate broker**  
fr. 8/5/21; 9/23/21

Docket      84

**\*\*\* VACATED \*\*\*    REASON: Order granting entered 9/27/21**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Orlanes Case

Represented By  
Lawrence B Yang

**Joint Debtor(s):**

Lourdes Halili Case

Represented By  
Lawrence B Yang

**Movant(s):**

Nancy J Zamora (TR)

Pro Se

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

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**1:17-13138 John Orlanes Case and Lourdes Halili Case**

**Chapter 7**

**#11.30** Debtors' Motion to convert chapter 7 case back to chapter 13  
(confirmed plan in 2018 with applicable modifications provided  
by the CARES ACT)

fr. 8/5/21; 9/23/21

Docket 88

**\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 9/28/21. [Dkt.  
124]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Orlanes Case

Represented By  
Lawrence B Yang

**Joint Debtor(s):**

Lourdes Halili Case

Represented By  
Lawrence B Yang

**Movant(s):**

John Orlanes Case

Represented By  
Lawrence B Yang  
Lawrence B Yang  
Lawrence B Yang

Lourdes Halili Case

Represented By  
Lawrence B Yang  
Lawrence B Yang  
Lawrence B Yang



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**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

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**1:21-11348 Gagik Sargsyan**

**Chapter 11**

**#12.00 Debtor's Motion for order authorizing use of cash collateral**

Docket 33

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
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**Debtor(s):**

Gagik Sargsyan

Represented By  
Vahe Khojayan

**Trustee(s):**

Andrew W. Levin (TR)

Pro Se

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**Chapter 11**

**#13.00** Motion in Individual Ch 11 Case for Order  
Employing Professional (LBR 2014-1)

Docket 11

**Tentative Ruling:**

**I. BACKGROUND**

On August 10, 2021, Gagik Sargsyan ("Debtor") filed a voluntary chapter 11, subchapter V petition. On August 13, 2021, Debtor filed an application to employ Vahe Khojayan as general bankruptcy counsel (the "Application") [doc. 11]. On September 7, 2021, LNV Corporation ("LNV") filed an opposition to the Application (the "Opposition") [doc. 32]. In the Opposition, LNV contends that: (A) Mr. Khojayan did not provide specific facts regarding his prepetition representation of Debtor; (B) Mr. Khojayan may be owed attorneys' fees stemming from such prepetition representation; (C) Mr. Khojayan aided Debtor with transfers of assets from a trust to Debtor; and (D) there may be a conflict of interest based on Mr. Khojayan's prepetition representation of Debtor, Debtor's son and the trust.

On September 28, 2021, Mr. Khojayan filed an amended statement of disinterestedness (the "Statement") [doc. 52]. In the Statement, executed under penalty of perjury, Mr. Khojayan states that he is not a creditor of Debtor's estate. Mr. Khojayan further provides that, prepetition, he represented Debtor in connection with the following: (A) a civil case filed by Union Bank, N.A. against Debtor, which was dismissed in 2015; (B) in 2014, drafting a self-settled trust for Debtor and, in June 2021, overseeing the transfer of assets from the trust to Debtor and the closing of the trust; (C) in 2014, a judgment debtor examination conducted by LNV; and (D) between 2015 and 2017, a fraudulent transfer action filed by LNV, in which Mr. Khojayan represented Debtor and Debtor's son, as trustee of the trust.

**II. ANALYSIS**

Pursuant to 11 U.S.C. § 327(a)—

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Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under the title.

Generally, an actual conflict of interest is one "that is 'directly adverse' to another client or that is 'materially limited' by the representation of another client." *In re Wheatfield Business Park, LLC*, 286 B.R. 412, 420 (Bankr. C.D. Cal 2002). With respect to potential conflicts of interest—

Potential conflicts of interest come in enormously varying degrees. Some are quite likely to ripen into actual conflicts of interest. The likelihood of the development of other potential conflicts into actual conflicts may be very remote. Indeed, any lawyer with at least two clients has at least a remote conflict of interest: those clients may somehow develop a conflict, and the lawyer could then represent conflicting interests.

*Id.* 11 U.S.C. § 327 "prohibits an attorney (or other professional) from representing a debtor in a chapter 11 case if the attorney has or represents an *actual* conflicting interest. This prohibition is absolute, and is not subject to waiver or consent." *Id.*, at 420-21 (emphasis in *Wheatfield*). "In addition, § 327 also prohibits an attorney from holding or representing a certain level of *potential* conflicts of interests. Employment may not be approved where a potential conflict creates a meaningful incentive to act contrary to the best interests of the estate and its various creditors." *Id.*, at 421 (emphasis in *Wheatfield*).

Nevertheless, "the naked existence of a potential for conflict of interest does not prohibit employment under § 327(a).... It is for the court to decide whether the attorney's proposed interest carries with it sufficient threat of material adversity to warrant disqualification." *Id.* (internal quotation omitted).

Thus an actual conflict of interest creates a violation of § 327. A potential conflict of interest may also require the disqualification of a

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professional if, *in the judgment of the court*, the conflict is sufficiently important and there is a sufficient likelihood it will ripen into an actual conflict.

*Id.* (emphasis added). Under Rule 3–310(E) of the California Rules of Professional Conduct—

A member shall not, *without the informed written consent of the client or former client*, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

In addition, pursuant to the stricter requirements of 11 U.S.C. § 327(a), "a lawyer has an interest materially adverse to the interest of the estate if the lawyer either holds or represents such an interest." *In re Tevis*, 347 B.R. 679, 688 (B.A.P. 9th Cir. 2006). In *Tevis*, the Bankruptcy Appellate Panel of the Ninth Circuit ("BAP") drew a distinction between concurrent and successive representation. *Id.*, at 690-91. Although the BAP held that concurrent representation violates § 327(a), the BAP noted that "[t]he test if quite different with respect to successive representation." *Id.* Where successive representation is at issue, the representation violates § 327(a) "only if there was a substantial relationship between the subject matter of that representation and the representation of the" debtor. *Id.*, at 691.

Here, the Statement disposes of most of the concerns set forth in the Opposition. Specifically, Mr. Khojayan testified that he does not have a claim against the estate. Mr. Khojayan also provided specific facts regarding his prepetition representation of Debtor. Further, Mr. Khojayan's involvement in prepetition transfers resulted in property coming into the estate. In addition, although Mr. Khojayan formerly represented both Debtor and Debtor's son, *in his capacity as trustee of the trust*, Mr. Khojayan contends the trust no longer exists. In assessing the claims register and Debtor's schedules and statements, neither the trust nor Debtor's son is scheduled as a creditor of the estate. As such, there does not appear to be an actual conflict of interest.

Nevertheless, in his schedule G, Debtor stated that his son is a tenant residing in

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property of the estate. Although Mr. Khojayan formerly represented Debtor's son only in his capacity as trustee of the trust, the risk of a potential conflict with the estate is not absent. To satisfy the stringent requirements of § 327(a) and California Rule of Professional Conduct 3-310(E), Mr. Khojayan should obtain: (A) declarations by Debtor and Debtor's son regarding the nature of Mr. Khojayan's prepetition representation and whether any confidential information received in connection with the prepetition representation may be relevant to a potential dispute between the estate, as landlord, and Debtor's son, as tenant; and (B) informed, written consent by Debtor and Debtor's son. In the declaration submitted by Debtor's son, Debtor's son should note whether he provided a security deposit to Debtor in connection with his lease. Finally, Mr. Khojayan did not serve the Application on Debtor. Prior to a continued hearing on this matter, Mr. Khojayan must serve the Application and all supplemental declarations on Debtor.

**III. CONCLUSION**

The Court will continue this hearing to **2:00 p.m. on November 4, 2021**. No later than **October 14, 2021**, Mr. Khojayan must file and serve on all parties in interest, including Debtor: (A) the supplemental declarations and consent forms discussed above; and (B) notice of the continued hearing. Any response to the supplemental filings must be filed and served no later than **October 21, 2021**.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gagik Sargsyan

Represented By  
Vahe Khojayan

**Trustee(s):**

Andrew W. Levin (TR)

Pro Se

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**Chapter 11**

**#14.00** Motion to strike untimely objections filed by creditor LNV Corproation

Docket 37

**Tentative Ruling:**

In light of, among other things, other pleadings filed by the debtor in response to the objection [docs. 52 and 53], the Court's ruling on the merits [calendar no. 13], and the Court's continuance of the hearing, the motion to strike is denied.

LNV Corporation must submit an order within seven (7) days.

<b>Party Information</b>
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**Debtor(s):**

Gagik Sargsyan

Represented By  
Vahe Khojayan

**Trustee(s):**

Andrew W. Levin (TR)

Pro Se

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**Chapter 11**

**#15.00** Status conference re: chapter 11, subchapter V case

fr. 9/23/21

Docket 1

**Tentative Ruling:**

The debtor must explain the differences between his projected income and expenses for six months, post-petition [doc. 54], and his described income and expenses, as set forth in his schedules I and J [doc. 1].

In addition, what are debtor and LNV Corporation's intentions for participating in mediation concerning, *inter alia*, the terms of a chapter 11 plan, with the Subchapter V trustee or with another mediator?

The bar date has been set for **October 19, 2021**.

Pursuant to 11 U.S.C. § 1189(b), the debtor's deadline to file a proposed plan is **November 8, 2021**.

<b>Party Information</b>
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**Debtor(s):**

Gagik Sargsyan

Represented By  
Vahe Khojayan

**Trustee(s):**

Andrew W. Levin (TR)

Pro Se